

The Montana ABLE Act

SB 399 – Thomas

GENERAL OVERVIEW

The Achieving a Better Life Experience Act (ABLE) Act was passed by Congress and signed into law at the end of 2014. The law allows eligible individuals with disabilities the ability to establish "ABLE accounts" (also known as 529A accounts) for qualified beneficiaries that resemble the qualified tuition programs, often called "529 accounts", that have been established under that section of the tax code since 1996. The new ABLE accounts will allow more individual choice and control over spending on qualified disability expenses and limited investment decisions, while protecting eligibility for Medicaid, Supplemental Security Income, and other important benefits for people with disabilities. Without these accounts, many people with disabilities have very limited avenues to save and allow for further independence.



Each state will need to take action to make the accounts available to its residents. Assets in an ABLE account and distributions from the account for qualifying expenses would be disregarded or receive special treatment when determining the beneficiary's eligibility for most federal means-tested benefits.

KEY CHARACTERISTICS OF THE MONTANA ABLE ACT

- The Montana version of the ABLE Act will be run very similarly to Montana's Family Education Savings Program as established in Montana Code Annotated 15-62-101.
- Any person, such as a family member, friend, or the person with a disability, may contribute to an ABLE account for an eligible beneficiary;
- An ABLE account may not receive annual contributions exceeding the annual gift-tax exemption (\$14,000 in 2015);
- Unlike some states with government-run ABLE programs, the Montana ABLE Act will be carried out through a public-private partnership using selected financial institutions to serve as depositories for individuals' savings accounts established pursuant to the Act. The Board of Investments will act as the government partner, as well as a committee, to help select the financial institutions that could act as depositories.
- An eligible individual is a person (1) who is entitled to benefits on the basis of disability or blindness under the Supplemental Security Income (SSI) program or under the Social Security disability, retirement, and

survivors program OR (2) who submits certification that meets the criteria for a disability certification. An eligible individual's disability must have occurred before the age 26.

- Qualified disability expenses are any expenses made for the benefit of the designated beneficiary and related to his/her disability, including: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations.

- Earnings on an ABLE account and distributions from the account for qualified disability expenses do not count as taxable income of the contributor or the eligible beneficiary. Contributions to an ABLE account

must be made in cash from the contributor's after-tax income. The Act provides a Montana income tax deduction of up to \$3,000 per year for contributions, which is identical to the treatment for 529 accounts.



- Assets in an ABLE account may be rolled over without penalty into another ABLE account for either the designated beneficiary (for instance, if moving to another state) or any of the beneficiary's qualifying family members.

FEDERAL TREATMENT OF MONTANA ABLE ACCOUNT

- Means-Tested Programs – Assets in an ABLE account and distributions from the account for qualified disability expenses would be disregarded when determining the designated beneficiary's eligibility for most federal means-tested benefits.

- Supplemental Security Income (SSI): For SSI, only the first \$100,000 in an ABLE account will be disregarded. Assets above \$100,000 will count as resources under SSI. In addition, if the designated beneficiary's ABLE account balance exceeds \$100,000, the individual's SSI benefits will not be terminated, but instead will be suspended until such time as the individual's resources fall below \$100,000. Further, it is intended that distributions expended for housing purposes will receive the same treatment which all housing costs paid by outside sources receive.

- Medicaid Eligibility: A beneficiary will not lose eligibility for Medicaid based on the assets held in their ABLE account, even during the time that SSI benefits are suspended (as described above for an account with over \$100,000).

SUPPLEMENT TO EXISTING PLANNING TOOLS

- ABLE Accounts provide a tool for disabled individuals and their families to supplement available special needs trust planning. In appropriate circumstances, these plans will eliminate the time and expense required to set up a special needs trust (e.g. attorneys fees, court costs), and provides favorable tax treatment more consistent with 529 plans.